



1. I am Mehdi Nafai.
2. The facts stated in this declaration are within my personal knowledge and if called to testify I could testify competently to them.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

### FACTS

1. Mr. Baalouach speaks Moroccan "Berber" as his first language and Arabic as his second language. Mr. Baalouach speaks limited English and can read almost no English.
2. At all times material to this action, Defendants Doris Alicia Cordova and Defendant Summit Mortgage conducted business which included finding borrowers who wanted residential loans, including "federally related loans" as that phrase is defined by RESPA and referring those borrowers to lenders.
3. Defendant Doris Alicia Cordova and Defendant Summit Mortgage conducted business as a "mortgage broker" as that phrase is defined by Regulation X at 24 C.F.R. § 3500.2. As such, Defendant Doris Alicia Cordova and Defendant Summit Mortgage, provided real estate "settlement services" as that phrase is defined by RESPA at 12 U.S.C. § 2602(3) and at 24 C.F.R. § 3500.2.

- 1       4. On or about September, 2006 Mr. Baalouach discussed the possibility of refinancing  
2       the Property with me.
- 3
- 4       5. All conversations between Mr. Baalouach and me regarding the refinancing of the  
5       Property were conducted in Arabic.
- 6
- 7       6. Mr. Baalouach's only information and communication, prior to the date of loan  
8       closing, regarding the refinancing of the Property came from information supplied by  
9       me either in person or by telephone. I supplied all information concerning refinancing  
10      the Property to Mr. Baalouach exclusively in Arabic.
- 11
- 12      7. Pursuant to 12 U.S.C. §§ 2604 and 2607, Defendant Summit Mortgage and Defendant  
13      Doris Alicia Cordova were obligated to fully disclose all costs, expenses, and fees  
14      from others, and not to accept any kickbacks or referral fees from others, associated  
15      with the "federally related mortgage loan" and Defendant Summit Mortgage and  
16      Defendant Doris Alicia Cordova's provision of mortgage brokerage services.
- 17
- 18      8. The existing first loan on the Property was secured by a Deed of Trust with EMC  
19      Corporation as the beneficiary. The existing second loan on the Property was secured  
20      by a Deed of Trust with Greenpoint Mortgage as the beneficiary.
- 21
- 22      9. On or about October 26th, 2006 Defendant Doris Alicia Cordova, Defendant Summit  
23      Mortgage and Defendant Realty Mortgage conducted a loan closing to consummate its  
24      residential loan to Mr. Baalouach, such loan being a "federally related mortgage loan"  
25      as defined by RESPA at 12 U.S.C. § 2602(1) and at 24 C.F.R. § 3500.2.

1           10. The loan closing was conducted at 3000 Clayton Road, Concord, California 94519.

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4           11. The proceeds of the two, new loans were to refinance the two, existing deeds of trust  
5           secured by the Property and for personal, family or household purposes.

6  
7           12. The two loans were secured against title to Mr. Baalouach's principal dwelling, the  
8           Property, by two Separate Deeds of Trust recorded with the San Francisco Assessor-  
9           Recorder. The First Deed of Trust is recorded as DOC-2006-I278024-00, Acct 4-Old  
10          Republic Title Company, Thursday, November 2<sup>nd</sup>, 2006, Reel J259 Image 0160. The  
11          Second Deed of Trust is recorded with the San Francisco Assessor-Recorder, as DOC-  
12          2006-I278025-00, Acct 4-Old Republic Title Company, Thursday, November 2<sup>nd</sup>,  
13          2006, Reel J259 Image 0161.

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15  
16          13. On or about November 1, 2006, Mr. Baalouach received a "HUD-1" Settlement  
17          Statement ("Settlement Statement"), dated November 1, 2006.

18  
19          14. A true and accurate copy of the "Settlement Statement" is attached to this Declaration  
20          as Exhibit A, and by this reference is incorporated herein [*not reprinted herein*].

21  
22  
23          15. The Settlement Statement provides on line 811 as follows: "REALTY MORTGAGE,  
24          LLC SHALL PAY A YIELD SPREAD PREMIUM OF \$18,281.25 TO SUMMIT  
25          MORTGAGE."

1  
2 16. Defendant Realty Mortgage in fact paid this fee to Defendant Doris Alicia Cordova  
3 and Defendant Summit Mortgage Company in exchange for those defendants' referral  
4 of Mr. Baalouach to Defendant Realty Mortgage for the purpose of making a  
5 "federally related mortgage loan" to Mr. Baalouach.

6  
7 17. Defendant Summit Mortgage Corporation and Defendant Doris Alicia Cordova's  
8 receipt of this steering fee increased Mr. Baalouach's settlement costs. Defendant  
9 Summit Mortgage and Defendant Doris Alicia Cordova arranged for Mr. Baalouach to  
10 receive a loan at a higher interest rate and with more oppressive loan terms, including a  
11 pre-payment penalty than Mr. Baalouach could have otherwise received so that  
12 Defendant Doris Alicia Cordova and Defendant Summit Mortgage Corporation could  
13 receive the "yield spread premium" payment.

14  
15 18. This fee for steering was paid indirectly by Mr. Baalouach through a higher interest  
16 rate, and inferior loan terms than that which Mr. Baalouach could have otherwise  
17 received.

18  
19 19. Defendant Doris Alicia Cordova and Summit Mortgage Corporation received this fee  
20 pursuant to an agreement or understanding that business incident to or a part of a real  
21 estate "settlement service" involving a "federally related mortgage loan" would be  
22 referred by Defendant Doris Alicia Cordova and Summit Mortgage Corporation to  
23 Defendant Realty Mortgage.

1 20. At all times relevant herein, Mr. Baalouach had no understanding and received no  
2 explanation of the fact that Defendant Doris Alicia Cordova and Defendant Summit  
3 Mortgage received this "yield spread premium" fee as a payment for Defendant Doris  
4 Alicia Cordova and Defendant Summit Mortgage steering Mr. Baalouach into a loan  
5 with a higher interest rate and more onerous loan terms.

6  
7 21. At all times relevant herein, Mr. Baalouach had no understanding and received no  
8 explanation of the fact that this "yield spread premium" fee was paid indirectly by Mr.  
9 Baalouach through a higher interest rate and more oppressive loan terms than were  
10 otherwise available to Mr. Baalouach.

11  
12 22. Neither Defendant Doris Alicia Cordova nor Defendant Summit Mortgage disclosed to  
13 Mr. Baalouach that the payment of this "yield spread premium" fee to Defendant  
14 Summit Mortgage and Defendant Doris Alicia Cordova constituted a kickback or  
15 referral fee at or prior to the time that Defendant Doris Alicia Cordova and Defendant  
16 Summit Mortgage made the referral to Defendant Realty Mortgage in connection with  
17 Defendant Realty Mortgage funding a "federally related mortgage loan."

18  
19 23. Instead, the fee appeared on the Settlement Statement listed solely as "yield spread  
20 premium" without prior, contemporaneous or future explanation in Arabic (or in any  
21 language) as to its meaning.

22  
23 24. Mr. Baalouach was not advised in a manner that he was reasonably capable of  
24 understanding that there was a pre-payment penalty on the new loans.  
25

1 25. Mr. Baalouach was not advised in a manner that he was reasonably capable of  
2 understanding that the First Trust Deed had a negative amortization component.

3  
4 26. Mr. Baalouach was not advised in a manner that he was reasonably capable of  
5 understanding that if Mr. Baalouach made the minimum loan payment that the loan  
6 balance would actually grow larger rather than smaller over time.

7  
8  
9 I declare under the penalty of perjury under the laws of the State of California that the above is  
10 true and correct. Executed this 23<sup>rd</sup> day of May, 2008 at San Francisco, California.

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12   
13 Mehdi Nafai

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20 Respectfully submitted,  
21 s/Scott A. Flaxman  
22  
23  
24  
25

# EXHIBIT A



## A. Settlement Statement

U.S. Department of Housing and Urban Development

OMB No. 2502-0065



## OLD REPUBLIC TITLE COMPANY

## B. TYPE OF LOAN

1. ☐ FHA 2. ☐ Fannie Mae 3. ☒ Other, Name:4. File Number  
011006009-307. Loan Number  
75310268728. Mortgage Insurance  
Case Number4. ☐ VA 5. ☐ Other, Name:

C. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "to/borrower" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. Name and Address of Borrower  
All Bankovich  
604 Geary Ave  
San Francisco, CA 94102

E. Name and Address of Seller

F. Name and Address of Lender  
Resaly Mortgage, LLC  
2901 Douglas Boulevard Suite 205  
Roseville, CA 95661

G. Property Location  
68 Cayuga Ave  
San Francisco, CA 94101 (See Attachment)

H. Settlement Agent  
Old Republic Title Company

I. Place of Settlement  
3000 Clayton Road  
Oakland, CA 94619

J. Settlement Date  
11/1/2006

## I. SUMMARY OF BORROWER'S TRANSACTION

## 100. GROSS AMOUNT DUE FROM BORROWER

101. Contract sales price	
102. Personal property	
103. Settlement charges to borrower (agent)	\$,854.04
104. PAYOFF EXISTING LOAN	\$87,215.53
105. PAYOFF EXISTING LOAN	\$8,372.48
106. Tax Payment (Lot 21, Block 6/52)	4,763.88

## Adjustments for items paid by seller in advance

106. Closing costs	to
107. County taxes	to
108. Assessments	to
109.	
110.	
111.	
112.	
113.	
114.	

120. GROSS AMOUNT DUE FROM BORROWER 783,304.93

## 200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER

201. Deposit or escrow money	
202. Principal amount of new loan 1st	731,170.00
Principal amount of new loan 2nd	124,228.00

## Adjustments for items received by seller

210. Closing costs	to
211. County taxes	to
212. Assessments	to
213.	
214.	
215.	
216.	
217.	
218.	
219.	

220. TOTAL PAID BY/FOR BORROWER 877,598.00

## 300. CASH AT SETTLEMENT FROM/TO BORROWER

301. Gross amount due from borrower cash	783,304.93
302. Less amounts paid by/for borrower cash	(877,598.00)

303. CASH ☐ FROM ☒ TO BORROWER

94,196.07

## K. SUMMARY OF SELLER'S TRANSACTION

## 400. GROSS AMOUNT DUE TO SELLER

401. Contract sales price	
402. Personal property	
403.	
404.	
405.	

## Adjustments for items paid by seller in advance

406. Closing costs	to
407. County taxes	to
408. Assessments	to
409.	
410.	
411.	
412.	
413.	
414.	

420. GROSS AMOUNT DUE TO SELLER

## 500. AMOUNTS PAID IN ACCOUNT DUE TO SELLER

501. Gross deposit (see item 104)	
502. Settlement charges to seller (see 103)	
503. Existing loan(s) being subject to	
504.	
505.	
506.	
507.	
508.	
509.	

## Adjustments for items received by seller

510. Closing costs	to
511. County taxes	to
512. Assessments	to
513.	
514.	
515.	
516.	
517.	
518.	
519.	

520. TOTAL RECEIVED FROM/ABOUT SELLER

## 600. CASH AT SETTLEMENT TO/FROM SELLER

601. Gross amount due to seller (see 420)	
602. Less reductions in amount due seller (see 503)	

603. CASH ☐ TO ☐ FROM SELLER

Section 5 of the Real Estate Settlement Procedures Act (RESPA) requires the lender to provide a Good Faith Estimate (GFE) and a Closing Disclosure (CD) to the borrower. The lender must also provide a copy of the CD to the borrower at the time of the closing. The lender must also provide a copy of the CD to the borrower at the time of the closing.

Section 5(a) of RESPA requires that HUD develop and prescribe this standard form to be used at the time of loan consummation. HUD's disclosure of all charges approved upon the borrower and seller. These are listed only disclosures that are designed to provide the borrower and seller with the information they need to make an informed decision.

Escrow No.: 0117006004-JD

1. SETTLEMENT CHARGES			Paid From Borrower's Funds At Settlement	Paid From Seller's Funds At Settlement
700. Total agent/broker's compensation based on price of				
Division of commission (line 700) as follows:				
701.				
702.				
703. Commission disbursed at settlement				
704.			1,875.00	
800. ITEMS PAYABLE IN CONNECTION WITH LOAN (See Attachment for Indemnity Retaining Charges)				
801. Loan Origination Fee				
802. Loan Discount			950.00	
803. Appraisal Fee				
804. Credit Report				
805. Lender's Inspection Fee				
806. Mortgage Insurance Application Fee				
807. Assignment Fee			65.00	
808. Tax Service Fee			775.00	
809. Underwriting Fee			10.00	
810. Flood Certification Fee				
811. Realty Mortgage, LLC shall pay a yield spread premium of \$18,281.25 to Bancorp Mortgage			25.00	
812. Wire Transfer Fee			350.00	
813. Approval Review				
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE			25.00	
901. Interest, 10/31/06 to 11/01/06, 1 day @ 4.25.01				
1000. RESERVES DEPOSITED WITH LENDER				
1100. TITLE CHARGES				
1106. Notify Fees to Jay Operating			30.00	
1108. This mortgage is (includes above items number): 1102, 1103, 1108. Endorsements and Additional Title Fees, if any				
1109.				
1111. Integrated Refinance Insurance and Settlement Service			3,075.00	
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES				
1201. Recording Fees: Deed \$ Mortgage \$ 125.00 Refinance \$			125.00	
1202. Countywide M/I/Insurance: Deed \$ Mortgage \$				
1203. State Impassment: Deed \$ Mortgage \$				
1204.				
1205.				
1300. ADDITIONAL SETTLEMENT CHARGES				
1301.				
1302.				
1303.				
1304.				
1305.				
1306.				
1307.				
1308.				

Escrow No.: 0111006084-30  
Loan No.: 7531026872

Attachment to HUD Statement

PROPERTY LOCATION

108 Rousseau  
San Francisco, CA 94101

==== Continuation from Page1 =====

BUYER ADJUSTMENTS

SELLER ADJUSTMENTS

AMOUNTS PAID BY OR IN BEHALF OF BORROWER

DEPOSIT OR EARNEST MONEY -- LINE 201

PRINCIPAL AMOUNT OF NEW LOAN(S) -- LINE 202

Realty Mortgage, LLC  
2901 Douglas Boulevard Suite 205  
Roseville, CA 95661  
Loan No.: 7531026872  
Position: 1  
Principal amount

731,250.00

Realty Mortgage LLC  
2901 Douglas Boulevard Suite 205  
Roseville, CA 95661  
Loan No.: 7531026872  
Position: 2  
Principal amount

146,250.00

Escrow No.: 011100608430

## Attachment to HUD Statement

Lender: Realty Mortgage LLC  
 2901 Douglas Boulevard Suite 205  
 Roseville, CA 95661

Loan No. 7531026673

## Subordinate Financing Charges

Item	Borrower	Seller
Wire Fee - 2nd Ln	25.00	
Underwriting Fee - 2nd Ln	200.00	
Flood Certification - 2nd Ln	18.00	
Broker Admin Fee - 2nd Ln	550.00	
Processing Fee - 2nd Ln	1,025.00	
Total	1,818.00	